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From the Author.

LABOUR AND LABOUR LAWS.

With some exceptions in the case of labour imposed as a punishment for crime or as a test or condition of aid to the poor under the poor laws, the labour here to be spoken of is labour by freemen,—that is to say, labour by persons having the primary right to choose whether they will labour or not, and to choose the terms on which they will consent to labour, if labour be their choice. Further, although voluntary labour of men is undertaken from various motives,—for their own profit, for self-preservation, for love, from public or private duty apart from the prospect of immediate gain,—the labour now treated of relates especially to that rendered to others for pecuniary reward, for money or money's worth,—in other words, for *wages*. This class of persons consists of all those who serve their employers by hand labour, whether rude or skilled, in any branch of productive industry or manufacture, including agriculture, mining, and the like, as well as the processes by which skilled artisans elaborate raw material to its final destination and use. Purely domestic service and the service of shopmen and clerks, as well as the work of contractors for the service of others, who do not work with their own hands, is excluded from specific notice here. The

labourers falling within the class thus popularly described, comprise upwards of a moiety of the present adult male population of the British Isles.

Although this article deals with free labour, the present position of the free labourer cannot be rightly understood without a glance at past history, and some attention to the distinction between voluntary and forced labour.

In every age and country, until times comparatively recent, compulsory personal servitude appears to have been the lot of a large, perhaps the greater, portion of mankind.* The slave was a man who had been captured in war or procured by purchase, or who had surrendered himself to the dominion of another as the alternative of starvation or in discharge of a debt, and it was his hands that tilled the soil, dug the mine, wove the cloth, and built the walls in ancient Greece and Italy. It has been asserted that in the early state of Rome the proportion of slaves, who were valued as property, was more considerable than that of hired servants, who could be computed only as an expense. It was thought more for the interest of the merchant or manufacturer to purchase than to hire his workmen, and in the country slaves were employed as the cheapest and most laborious instruments of agriculture. On the other hand, it has been inferred from our scanty materials that, as the Roman empire extended, the agricultural labourer and the citizen in Spain, Gaul, and Britain, in Syria and Egypt, maintained himself, as in the present day, by his own labour and that of his household, without the aid of any

* "The simple wish to use the bodily powers of another person as a means of ministering to one's own ease or pleasure is doubtless the foundation of slavery, and as old as human nature" (Maine).

slave; but this is probably too favorable a picture. In the decline of the Roman empire, Roman captives were taken home by the northern conquerors. The useful craftsmen—smiths, carpenters, workmen in the metals, shoemakers, tailors, dyers, and others—employed their skill for the use or profit of their masters; while those who were destitute of art but capable of labour, were condemned, without regard to their former rank, to tend the cattle and cultivate the lands of the victors. This, however, was only turning the tables on the Romans, for capture in war forms one of the principal sources of supply of slaves wherever slavery exists.

The Germans, in their primitive settlements, were accustomed to the notion of slavery, incurred, not only by captivity, but by crimes, by debt, and the wager of personal liberty in gaming. In the glimpse we get of the conditions of labour elsewhere the same essential features are discernible. In the changes of time and of geographical area of observation the harsher word slave may disappear; yet the thing not only survived the introduction of Christianity, but was long regarded as not inconsistent with it, and was recognised as a national institution in civilised Europe. Whether under the name of slavery or of serfdom, or without either name, north, south, east, and west, an absolute right, apart from contract, to earnings and to the person of the labourer was accepted, if not openly vindicated. In looking at the present day at the vestiges of man's former and most permanent handiwork, it is instructive to regard them with an eye to the distinctions between periods of forced and voluntary labour. The pyramids of Egypt and the wall of China are monuments of slave labour, and the same is the case with the classic remains at Athens and Rome, so

far at least as relates to the labour involved in quarrying and hewing of stone, and the making of bricks and placing them in position. As regards Britain, our knowledge is too slight, and the conjectures as to the origin and objects of such structures as Stonehenge and Avebury, are too varied to allow of positive assertion; but it seems legitimate to conclude that the labour was forced. British and Roman camps and earthworks for military purposes probably exhibit the result of organised military labour combined with the forced labour of the inhabitants of the district. In this aspect the fortresses and defences destined for use consequent on the campaigns of a Cæsar or a Napoleon, of an Alexander or a Clive, do not materially differ. The remains still to be seen of Agricola's works on the line between the Firths of Clyde and Forth, as well as of the Roman walls and roads throughout England, and the later but ruder gigantic earthwork of the Mercian king between England and Wales, may be regarded as fruits of slave labour. The stupendous aqueducts of Roman brickwork in various parts of southern Europe are naturally compared with the viaducts of the present age. The comparison may well extend to the accompanying conditions of labour.

Passing over the general effect of serfdom throughout northern Europe, and of the gradual manumission of toilers, as only a minute part of a very large subject, and directing our attention to the conditions of ordinary daily labour in the earliest period of the history of the British Islands, we find it necessary to classify labour in relation to its particular application.

At the present day the most obvious natural distinction to be observed in this connection is that

between the labour of the husbandman on the one hand, and the labour of the mechanic and artisan on the other, a distinction to some extent parallel with a division into rural and urban labour. In an attempted division of labour in this country, recorded in writing, which, although not in its present form earlier than the fifteenth century, and distorted by a fanciful notion of adapting everything to triads, probably gives us a knowledge of a very primitive people, the follow-divisions of labour are found :—(1) domestic art, with its three primary branches—husbandry or cultivation of land, pastoral cares, and weaving; and (2) mechanical arts—smith craft, carpentry, and stone-masonry ('Ancient Laws, &c., of Wales,' 1841).

The social status of these various labourers is a very difficult question. It seems clear that the heads of departments of labour although working for the lord or chief, were freemen. The authority just cited expressly says that smiths, stone-masons, and carpenters had equal privileges, and everyone following those trades was entitled, besides his maintenance and firing, to a fixed measure of land for cultivation, independently of what he might have by birthright. It is clear that there must have been subdivisions, as in the present day, between craftsmen and labourers engaged in the same trade, as between a mason and his labourer, between a ploughman and the driver of the team, and between the shepherd responsible for the flock and the cowherd who merely drove cattle to and from the pasture; a freeman might perform one branch of duty and an absolute slave or serf another on the same land, and for the same chief or head. It cannot be denied that slavery in the strictest sense was an institution among the Saxons in England, and

that in the earliest English laws such slaves are found, but the true slave class was a small one, and it has been doubted whether the labour of an ordinary serf was practically more severe, or the remuneration in one form or another much less, than that of an agricultural labourer in some parts of England at this day. On the other hand, a fully-qualified freeman might be a simple husbandman.

Of the main conditions of labour at an early period in English towns we have no details. With the gradual development of urban populations around the castle of the lord, it is improbable that in any great number of cases the inhabitants long continued in the condition of personal serfage. The city populations of this island had not the habit and use of slavery. Serfs and oppressed labourers from adjacent estates may have been glad to take refuge from taskmasters more than ordinarily severe, but there is no doubt that freemen gradually united with them under the lord's protection, that strangers engaged in trade sojourned among them, and that a race of artisans gradually grew up in which original class feelings were greatly modified. From these and other causes the distinctions between agricultural labourers and mechanics and artisans grew and became permanent.

Proceeding to notice the legislation of England on the subject of labour, we observe, in passing, that the provisions of Magna Charta were not in the interests of labour. The stipulations against the forced building of new bridges and embankments, and for removing all weirs in rivers, were not by way of protest against involuntary labour, but in relief of a higher class. Direct legislation on labour dates as far back as the twenty-third year of the reign of Edward III, when

the first Statute of Labourers was passed. The population had been much reduced by pestilence, and the demand for labour naturally led working classes to insist on higher wages, and there were "some rather willing to beg in idleness than by labour to get their living." The statute reciting these facts, and the "lusts especially of ploughmen and such labourers," enacted that "every man and woman of our realm of England, of what condition he be, free or bond, able in body, and within the age of threescore years, not living in merchandise, nor exercising any craft, not having of his own whereof to live, nor land about whose tillage he might employ himself, nor serving any other," should be bound to serve if he is in convenient service, his estate considered, at the wages accustomed to be given in the twentieth year of that reign, or five or six years before. If he refused, he was to be committed to jail till he found surety to enter into the service. No persons were to pay more than the old wages, upon pain of forfeiting double what they paid. If the lords of the towns or manors presumed to infringe the law, they were to be sued for treble the sum paid or promised by them or their servants. Artificers and workmen were put under the same restrictions, upon pain of imprisonment for taking more. This statute is remarkable as the first in which any notice occurs of the free labourer for hire, for the necessity of a statute to force him to work at fixed wages recognises his otherwise free state.

A statute passed two years later (25 Edward III), reciting that the earlier ordinance was disobeyed, contained minute regulations as to wages. If labourers or artificers left their work and went into another county, process was to be issued to the sheriff

to arrest and bring them back. In 1360 (34 Edward III) the former Statute of Labourers was confirmed, except that labourers were not to be punished by fine and ransom. Instead thereof, the lords of towns (*seigneurs des villes*) might take and imprison them for fifteen days if they would not do as required by law, and then send them to the next jail, "there to abide without bail till they will do so according to the statute." The statute enacted that "all alliances and covins of masons and carpenters, and congregations, chapters, ordinances, and oaths betwixt them made, or to be made, shall from henceforth be void and wholly annulled, so that every mason and carpenter, of what condition soever he be, shall be compelled by his master to whom he serveth to do every work that to him pertaineth to do, either of free stone or of rough stone, and also every carpenter in his degree. But it shall be lawful to every lord or other to bargain and covenant for their works in gross with such labourers and artificers when it pleaseth them, so that they perform such works well and lawfully, according to the bargain and covenant with them thereof made." A workman absenting himself from his service, and going to another town or county, was to be proceeded against under the previous statute, to outlawry, to be followed by imprisonment till he did as required by law, and made satisfaction to the party; nevertheless, he was to be burned in the forehead with the letter F, "in token of the falsity," if the party aggrieved so required, and if the justices should so advise. Eight years later, in the same reign (1368, 42 Edward III), the statute and ordinance concerning labourers was confirmed, and commissions directed to justices to hear and determine matters concerning it.

Indubitable records still exist, proving that before the passing of those statutes, and down to the fifteenth century, workmen of various descriptions were pressed by writs addressed to sheriffs to work for their king at wages, regardless of their will as to the terms and place of work. Diggers and hewers of stone, masons, and carpenters, as well as ordinary labourers, were so impressed, and by services thus obtained the buildings at Windsor for the Knights of the Round Table, on the institution of the Order of the Garter, were erected. In this case the sheriffs were commanded to take security from the workmen not to depart from Windsor without the permission of William of Wykenham, the king's surveyor. Notwithstanding these precautions, many workmen, so impressed, secretly left, in order to work for other persons at higher wages, and writs were directed to the sheriffs of London, commanding them to make proclamation prohibiting any person from employing or retaining any of the workmen on pain of forfeiting all their goods, and, as regards the workmen, commanding their arrest and imprisonment.*

An Act was passed in the reign of Richard II (1388, 12 Richard II), by which no servant or labourer, whether man or woman, could depart out of the hundred to serve elsewhere, unless bearing a letter

* These proceedings were no doubt founded on notions of the royal prerogative, of which the impressment of seamen affords a more recent illustration. This forcing men to work for the king at low wages may be contrasted with proceedings within the present reign. Workmen employed in building the Queen's Palace at Westminster (the Houses of Parliament) struck for wages in the winter of 1841, and, having nothing to do, availed themselves of vacant seats in the Court of Queen's Bench, where her Majesty was constructively present. Here they were seen from day to day enjoying the comfortable temperature, undisturbed by any fear of writs or other compulsory process to force them to return to their work.

patent under the king's seal, expressing the cause of going and the time of return. Wages were fixed in a way that shows the classification of agricultural labour. The "bailiff for husbandry" stands first. The "master hine," the carter, and the shepherd are on an equality; the ploughman follows; after him the oxherd and cowherd, then the swineherd, the dairymaid and other women receiving equal wages, and every other labourer and servant according to his degree; no servant of artificers is to take more than the servants and labourers above named after their estate. The givers and takers forfeited the excess, or double or treble if attainted before; "and, if the taker so attainted have nothing whereof to pay the said excess, he shall have forty days imprisonment." This was followed by a remarkable clause: "also it is ordained and assented that he or she which useth to labour at the plough or cart, or other labour or service of husbandry, till they be of the age of twelve years, shall from thenceforth abide at the said labour, without being put to any trade or handicraft; and, if any covenant or bond of apprenticeship be from henceforth made to the contrary, the same shall be holden for none." By a statute of the following year (13 Richard II), the justices were to settle and proclaim between Easter and Michaelmas what should be the wages of day labourers.

Early in the fifteenth century we have a glimpse of something beyond this continued legislation interfering with freedom of labour, in a reservation in favour of children being sent to school. An Act of 7 Henry IV, putting a property qualification on apprenticeship and requiring children to be put to such labour as their fathers and mothers are of, or as their estates require,

on penalty of one year's imprisonment, fine, and ransom, and of one hundred shillings for receiving such apprentices, has this sentence: "But any person may send their children to school to learn literature." Labourers and artificers are to be sworn to observe the statutes in force or be put in the stocks, and a penalty is imposed on towns neglecting to have stocks. In 1414, by a statute (2 Henry V) reciting that the servants and labourers of the shires of the realm flee from county to county because they would not conform to the law, and because the law was not put in force in every county, the former Acts were confirmed and directed to be put in force and proclaimed by the sheriff. Justices of the peace were empowered to send writs to the sheriffs for fugitive labourers in like manner as the justices have power to send to every sheriff for the felons or thieves before they are indicted, and to examine all kinds of labourers, servants, and their masters as well as artificers, and to punish them upon confession in accordance with the statutes.

Early in the following reign (2 Henry VI, 1423) further power was given to justices to compel by process an appearance before them of masters as well as servants for examination as to the execution of the statute of Henry V, and to give offenders a month's imprisonment. Four years later (1427) the conclusion was drawn that the statutes of Richard II were faulty, —that of 12 Richard II, because it was too hard upon the masters, that of 13 Richard II, because no penalty was attached to its breach; and, besides remedying the defects, it was enacted (6 Henry VI, c. 3) that justices should fix and make proclamation of wages. Two years earlier (1425) legislation had been directed against meetings of masons. The statute 3 Henry

VI, c. 1, recites that, "by the annual congregations and confederacies made by masons in their general chapters assembled, the good courses and effect of the Statutes of Labourers are publicly violated and broken, in subversion of the law, and grievous damage of all the commonalty;" and such chapters and congregations were forbidden. It was made felony to cause them to be assembled and held, and masons attending them were to be punished by imprisonment and fine. In 1444 (23 Henry VI) a scale of wages in agriculture and trade was fixed (including freemasons and "rough" masons, master carpenters and mesne carpenters, and master tilers and slaters), and a servant in husbandry was required before departing to give half a year's warning or else to serve his master the year following. Persons refusing to serve or labour were to be committed to jail, there to remain until they found sufficient surety to serve, and masters were entitled to fix a fine on such.

A statute towards the close of the fifteenth century (1495, 11 Henry VII) referring to previous statutes, especially to the 23 Henry VI, and complaining of their inadequacy or imperfect execution, proceeds to fix the wages of artificers and labourers with great minuteness. This Act contained a remarkable clause against unlawful conspiracy by workmen engaged in building; if such artificers or labourers "make or cause to be made any assembly to assault, harm, or hurt any person assigned to control and oversee them in their working, that he or they so offending have imprisonment for a year without letting to bail or mainprise, and further to make fine at the king's will." It is not surprising that even with so very limited knowledge of principles, a short time sufficed to show

how ineffectual minute legislation was, to control wages. The statute was repealed in the following year, "for divers and many reasonable considerations and causes, the king's highness moving, and for the common wealth of the poor artificers, as freemasons, carpenters, and other persons necessary and convenient for the reparations and buildings, and other labourers and servants of husbandry." But what is surprising is that (although the first legislation of the sixteenth century was in favour of masters*) we find in 1514 a statute regulating wages and hours of work and even the summer day sleep of artificers and labourers, and in fact a re-enactment of the law of 1495.† The London workmen could not endure this restriction as to wages, and in the following year were allowed to take the previous rate when working within the city or its liberties; the king's works were, however, excepted.

At this point it is necessary to refer to the provisions made against vagrancy in the sixteenth century, these being closely connected with compulsory labour. The great social revolution caused by the suppression of the monasteries, and by the consequent withdrawal of the support which those institutions afforded to the indigent, and too often to the idle, had led to the dispersion over the face of the country of a multitude of beggars, many of whom were able to work but preferred idleness, often adding theft and robbery to mendicancy. Under these circumstances harsh and cruel statutes were passed in the reigns of Henry VIII, Edward VI, and Elizabeth.

* In 1512 (4 Hen. VIII) the penalties for giving of wages contrary to the statute 12 Rich. II were repealed so far and only so far as relates to the masters.

† Miners and workers for tin, lead, iron, or silver, colliers for sea coal, and glass makers were excepted.

In 1530 (22 Henry VIII) any person, being whole and mighty in body and able to labour, found begging or being vagrant, and giving no satisfactory account how he lawfully obtained his living, might be arrested by a constable, and a justice might, in his discretion, cause every such idle person to be taken to the nearest town and there tied to the end of a cart naked, and to be beaten with whips throughout the town "till his body be bloody by reason of such whipping." He was then required to take an oath to return to his home "and put himself to labour as a true man ought to do." The whipping was to be repeated as often as he made default; but five years later the punishment for "rufflers, sturdy vagabonds, and valiant beggars" persisting in not working after a whipping was increased to having the upper part of the gristle of his right ear clean cut off. If still persistent he was to be tried, and executed as a felon.

On the accession of Edward VI a law was passed by which a serving man wanting a master, or loitering or wandering, and not applying himself to honest labour, might on conviction be marked with the letter V, and adjudged to be the slave for two years of the person buying him, giving him only bread and water or small drink, and such refuse of meat as the master should think fit, and causing him to work by beating, chaining, or otherwise, If he ran away he might not only be punished by his master in the same way, but the justices, on conviction, were to have him marked on the forehead or ball of the cheek with an hot iron with the letter S, and adjudge him to be the master's slave for life. If he again ran away the offence became felony, and he was to suffer the pains of death "as other felons ought to do." Any child of a vagabond,

above the age of five and under fourteen, might be adjudged the servant or apprentice of any person willing to take it until the age of twenty-four if a male and twenty if a female; if it ran away slavery followed for life. The master might put a ring of iron about the neck, arm, or leg of his slave to prevent his running away, with a penalty on any person helping him to take it off, and if the slave resisted correction he was to be executed as a felon. The slave might be sold or devised by will as other goods and chattels. This statute was repealed three years after, but it remains on the rolls of parliament, and nothing can obliterate the fact and the consequent disgrace attaching for all time to the parliament that could pass such a law, and to the country that could endure it for a day. This reintroduction of slavery in England by name, and in its worst form, is memorable, and serves to mark the alteration of opinion and feeling that has since taken place, much more than any contrast between freedom of labour and wages in the sense of the political economist.

Early in the reign of Elizabeth (5 Elizabeth, 1562) the statute commonly called "the Statute of Labourers," repealed all former statutes relating to labourers in husbandry and artificers or labourers engaged in particular trades, and consolidated and amended many former provisions. Its chief object was to provide a new rate of wages, and, in addition, to regulate in many respects the terms of employment as between the employer and the employed. This Act admits that the wages laid down by former statutes are in divers places too small in view of the general rise of prices, but approves of the principle and aims of previous legislation, the substance of which it seeks to digest

into a single statute. The statute draws a main distinction between artificers and labourers in husbandry. The former may not be hired for a less term than a year, and any unemployed person brought up in a craft or who had practised it for more than three years was bound, on pain of imprisonment, to accept service if required "by any person using the art or mystery wherein he has been exercised," unless he had a farm in tillage, an estate worth forty shillings a year, or goods to the yearly value of £10. Similar provision was made in respect of service in husbandry. Every person between the ages of twelve and sixty was in like manner bound to serve in husbandry unless possessed of property of specified amount, or employed as a fisherman or mariner, or in mining, or in any of the arts or sciences previously mentioned, or unless born a gentleman, or unless a member of a university or school. Minute regulations were made with reference to the rights and obligations both of master and servant. No person retained in husbandry or trade was to go out of the county or shire where he last served, to serve in any other, without a testimonial. No person leaving his service could be taken into another without showing such testimonial to the authorities of the place in which he was about to serve. If he broke this regulation he was to be imprisoned till he could procure a testimonial, and unless he did so within twenty-one days he was to be whipped. Every person retaining a servant without the latter showing such testimonial forfeited £5. Besides empowering justices in session to make a rate of wages, the statute fixed with great minuteness the hours of labour. In the time of harvest, justices or constables or other head officers might require artificers and

persons meet for labour to serve by the day in mowing, reaping, shearing, getting, or turning of corn, grain, or hay, according to the skill and quality of the person, and upon refusal might put him in the stocks for two days and a night. Even single women between the ages of twelve and forty might be compelled to serve in such employment as the justices might direct, under pain of imprisonment. Amended provision was made towards the close of the reign for justices yearly fixing the rate of wages.

It will be seen by the preceding summary how great were the restraints still placed by the legislature on the free action of labour. After this mass of unwholesome legislation it is instructive to notice the state of the labouring classes in England in the 16th century, as recorded by Harrison. After dividing English people into four sorts—gentlemen, citizens or burgesses, yeomen, and artificers and labourers—and describing the first three classes, he says :—

"The fourth and last sort of people in England are day labourers, poor husbandmen, and some retailers (which have no free land), copyholders, and all artificers, as tailors, shoemakers, carpenters, brickmakers, masons, &c. As for slaves and bondmen, we have none ; nay, such is the privilege of our country, by the especial grace of God and bounty of our princes, that, if any come hither from other realms, so soon as they set foot on land they become so free of condition as their masters. . . . This fourth and last sort of people have neither voice nor authority in the commonwealth, but are to be ruled, and not to rule others ; yet they are not altogether neglected, for in cities and corporate towns, for default of yeomen, they are fain to make up their inquests of such manner of people, and in villages they are commonly made churchwardens, sidemen, ale conners, now and then constables, and many times enjoy the name of headboroughs. Unto this sort also may our great swarms of idle serving-men be referred, of whom there runneth a proverb, Young serving-men, old beggars, because service is none heritage. . . . This, furthermore, among other things I have to

say of our husbandmen and artificers, that they were never so excellent in their trades as at this present. But, as the workmanship of the latter sort was never more fine and curious to the eye, so was it never less strong and substantial for continuance and benefit of the buyers. Neither is there anything that hurteth the common sort of our artificers more than haste, and a barbarous or slavish desire to turn the penny, and by ridding their work to make speedy utterance of their wares; which enforceth them to bungle up and despatch many things they care not how so they be out of their hands, whereby the buyer is often sore defrauded, and findeth to his cost that haste maketh waste, according to the proverb. Oh, how many traders and handicrafts are now in England whereof the commonwealth hath no need! How many needful commodities have we which are perfected with great cost, &c., and yet may with far more ease and less cost be provided from other countries if we could use the means! I will not speak of iron, glass, and such like, which spoil much wood, and yet are brought from other countries better cheap than we can make them here at home. I could exemplify also in many others."

Notwithstanding compulsory legislation, and the forcing of labour for the Sovereign already noticed, it is evident that the condition of the labourer, even when employed on royal property, was undergoing amelioration. In a remarkable but apparently unpublished letter of Humphrey Mitchell, surveyor of the Queen's works at Windsor (and for some time member of parliament for that borough), to Lord Burghley, written in 1575, he says—"At my first entry into this charge I could scarce get workmen by commission; since, with monthly 'payes,' impressing through the mayor those contumacious in work, rewarding the diligent, and thrusting out the evil where I perceive them loitering, I have brought them into such an obedience and a desire to work here that where I have one I can have twenty to serve her Majesty; and when at the first entry into the works, they had their breakfast at eight of the clock in the morning, and drinking

at three in the afternoon, I have taken that idle custom from them, and have only allowed them two hours at noon, and, as necessity serveth, sometimes but one with their contentation; and for that also I would have them they must know their duty, I bring them to the lecture at the college [Windsor] twice every week, losing no hour's work thereby, for those days they rest at twelve. I suffer not a swearer nor filthy talker in the works to my knowledge, by all which means I think her Majesty hath her work done as diligently as any other private man hath."

Light is thrown on the arrangement of hours by a clause in the above-mentioned Statute of Labourers of the fifth year of the Queen's reign. It enacted that—

"All artificers and labourers being hired for wages by the day or week shall, betwixt the midst of the months of March and September, be and continue at their work at or before five of the clock in the morning, and continue at work and not depart until betwixt seven and eight o'clock at night (except it be in the time of breakfast, dinner, or drinking), the which time at the most shall not exceed above two hours and a half in a day, that is to say at every drinking one half hour, for his dinner one hour, and for his sleep when he is allowed to sleep, the which is from the midst of May to the midst of August, half an hour at the most, and at every breakfast one half hour; and all the said artificers and labourers betwixt the midst of September and the midst of March shall be and continue at their work from the spring of the day in the morning until the night of the same day, except it be in time afore appointed for breakfast and dinner, upon pain to lose and forfeit one penny for every hour's absence, to be deducted and *defaulked* out of his wages that shall so offend."

In the first parliament after the accession of James an attempt made towards the close of the previous reign to enforce the rating of wages, and the payment of the rated amounts was renewed. The Act recites in the

same terms as were used only two years before, that the Act of 1562 "hath not, according to the true meaning thereof, been duly put in execution," and, in order to remove a doubt as to the application of the principle of assessing wages, expressly extends it "to rate wages of any labourers, weavers, spinsters, or workmen whatsoever, either working by the day, week, month, year, or taking any work at any person or persons' hand whatsoever, to be done in great or otherwise." The giving or receiving more or less than the proclaimed price was expressly declared to be an offence.

In Scotland we find complaints in the 16th century by masters of salt-pans of the great rise in wages, and early in the 17th century (1617) justices were directed to fix at quarter sessions the ordinary rate of hire and wages of workmen, labourers, and servants, and to imprison those who refused to serve for the appointed hire. At the same time, "that servants may be the more willing to obey the ordinance," power was given to the justices to compel payment of wages. This law was re-enacted in 1661. Some years previously (1606) any one hiring a collier or salter without a sufficient testimonial from his last master was compelled to deliver him up if demanded; and colliers and salters were empowered to apprehend vagabonds and sturdy beggars and force them to labour. In 1621 in consequence of "the great straits and necessities that the poor labourers of the ground" were driven to by the "fraud and malice" of servants who either refused to be hired without the promise of great wages, or else hired themselves from Martinmas to Whitsunday, then "casting them loose" on purpose to make their gain and advantage by extraordinary works, such as casting

and winning peats or turfs, building fold dykes, and shearing in the harvest, hired servants were forbidden to leave unless upon proof to a justice of the peace that they were hired to another. If it was found that a servant was not so hired, his master was empowered to detain him at the previous rate of wages. Power was given to apprehend a servant "who broke loose," and to deliver him to a constable or justice, and a power to all persons to apprehend loose and masterless men and women found within their own bounds; and the justices and constables were empowered to compel them to serve for competent hire and wages. Twenty years later servants in manufactories were compelled to work at reasonable rates, and not to hire without their previous master's consent. Houses of correction were erected for disobedient servants, and in 1672 masters of correction houses were empowered to receive such servants and to force them to work, and to correct them according to their demerits. These later laws of Scotland were accompanied by others directed against vagrancy.

Passing over legislation which either affected only particular trades (although denoting the growth of manufacturing industry), or related rather to the poor laws than directly to the subject of this article, and arriving at the middle of the 18th century, we find the legislature no longer employed in compelling labourers or artisans to enter into involuntary service, but regulating the summary jurisdiction of justices in the matter of disputes between employers and employed, in relation to contracts and agreements, express or implied, presumed to have been entered into voluntarily on both sides.

The statute 20 Geo. II, c. 19 (passed in 1746) pro-

vided that all complaints, differences, and disputes arising between masters and servants in husbandry hired for one year or longer (extended by a subsequent statute of the same reign to those hired for less than a year), or arising between masters and artificers, handicraftsmen, and miners (applied in 1829 to labourers of every sort), were to be determined by one or more justices, who, upon complaint of the servant, might determine any dispute as to wages and order payment of any sum found to be due, not exceeding £10 in case of a servant in husbandry, and £5 in case of artificers and other labourers, and, in the event of non-payment might levy the same by distress on the goods of the master. In case of complaint by the master, the authority of the justice was still larger. He had power to entertain a complaint of "misdemeanour, mis-carriage, or ill behaviour of the servant in his or her service or employment," and to hear, examine, and determine the same. If the decision was adverse to the servant, the justice might either abate some part of the wages due to such servant, or discharge him from the service, or he might punish the offender by committing him to the house of correction, "there to be corrected," which term was held to mean correction by whipping and holding to hard labour for a reasonable time, not exceeding a month.

A statute of 1823 (4 Geo IV, c. 34), the next general statute on this subject took a somewhat wider scope, dealing with breaches of contract on the part of the servant in not entering into the agreed service at all, as well as in quitting it before the term agreed on had expired, and subjecting these breaches as well as any misdemeanour or misconduct while in the service to the jurisdiction of the justice who might adjudge the

offender to be imprisoned in the house of correction for a term not exceeding three months (but without any power to order corporal punishment), abating a proportional part of his wages in the future, or adjudging him to lose the whole or part of his wages already earned; or he might dismiss him from the service.

Thus stood the statute law until 1867. In consequence of considerable dissatisfaction on the part of workmen with the adjudication of justices, a select committee of the House of Commons was appointed in the previous year to inquire into the state of the law as regards contracts of service between master and servant, and as to the expediency of amending it. That committee reported—

1. That the law as it then existed was objectionable.

2. That all cases arising under the law of master and servant should be publicly tried in England and Ireland before two or more magistrates, or before a stipendiary magistrate, and in Scotland before two or more magistrates, or the sheriff.

3. That procedure should be by summons in England and Ireland, and warrant to cite in Scotland, and, failing appearance of defendant in answer to summons or citation, the court should have power to grant warrant to apprehend.

4. That punishment should be by fine, and failing payment by distress or imprisonment.

5. That the court should have power when such a course is deemed advisable to order the defendant to fulfil the contract, and also, if necessary, to compel him to find security that he will do so.

6. That in aggravated cases of breach of contract, causing injury to person or property, the magistrate or sheriff should have the power of awarding punishment by imprisonment instead of fine.

7. That the arrest of wages in Scotland in payment of fines should be abolished.

The Master and Servant Act 1867, sometimes called Lord Elcho's Act, was framed upon the report of the committee, and embodied most of the recommendations. As regards simple breaches of contract, the position of

the servants was considerably improved. Imprisonment, which, under the former Acts, the magistrate was authorised to impose in the first instance as a punishment for a breach of the contract was taken away, except as auxiliary to the jurisdiction, as the consequence of disobedience to the order of the court; and wherever imprisonment might, under the former Acts, have been accompanied by hard labour, the power to order hard labour was taken away. Lord Elcho's Act did not, however, remove the dissatisfaction felt on the part of the workmen, and the events of a few years rendered it desirable to reconsider the whole law, with reference not only to breaches of contract but to other special legislation of a criminal kind, and to the general law of conspiracy affecting the relation of employer and employed.

Commissioners reported in 1875 recommending, so far as relates to the scope of this article, that the proceedings should be altogether divested of a penal character and assume that of a civil proceeding for specific performance or recovery of damages, and that, to effect the main object, Lord Elcho's Act should be amended or a new Act framed in clearer language. Within a few months of the presentation of the report, Mr. Cross then secretary of state, introduced two bills, the one an "Employers and Workmen Bill," and the other a "Conspiracy and Protection of Property Bill," and these bills, after undergoing considerable discussion and alteration in their different stages, were passed and came into operation on the 1st September 1875. This article only deals with the former Act. While carrying out the recommendation of the commissioners regarding Lord Elcho's Act, and placing all provisions of a penal character in a separate Act

("Conspiracy and Protection of Property"), the legislature thought fit to go further and take away the right of enforcing performance of contracts of labour (although that is a very important branch of civil procedure in relation to various matters of contract), and make it a mere question of recovery of damages, unless both parties agree that security for performance of the contract shall be given instead of damages. Adjudication can be by courts of summary jurisdiction.*

Neither this Act nor its predecessor takes away the right of parties to sue in the ordinary civil tribunals of the country; but the Act puts county courts (in Scotland the ordinary sheriff court of the county, in Ireland the civil bill court) practically on the same footing with courts of summary jurisdiction,—the jurisdiction of magistrates being simply because the county courts in most places do not sit sufficiently often for the practical adjudication of these differences. The title of the Act, "to enlarge the powers of county courts in respect of disputes between employers and workmen, and to give other courts a limited civil jurisdiction in respect of such disputes," indicates its general scope, which is borne out by its provisions. It extends to "any dispute between an employer and a workman arising out of or incidental to their relation

* In England such courts are a police or stipendiary magistrate, or, where there is no such magistrate, two or more justices sitting at some place appointed for holding petty sessions, or, in the city of London, the lord mayor or an alderman sitting at the Mansion House or Guildhall. In Scotland the court of summary jurisdiction is the small debt court of the sheriff of the county. In Ireland the court is constituted of one or more of the divisional justices of the police district of Dublin metropolis, and elsewhere in Ireland of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions. These courts are, for the purposes of the Act, civil courts.

as such." The expression "workman" does not include a domestic or menial servant, but means any person, who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of the Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour. Payment of damages and debts under the Act, as in other cases of judgment debts, is enforceable by imprisonment for a term not exceeding six weeks, only on proof of ability and neglect to pay, whether the proceedings be in the county court or in the court of summary jurisdiction.

Two circumstances show the rapid strides made in in a few years in the position of labour in relation to legislation. Lord Elcho's Act in 1867 received the title of "The Master and Servant Act." In eight years that title is silently dropped, and "Employers and Workmen" substituted. In 1867 the Prime Minister spoke in high terms of eulogy of Lord Elcho's Act as securing valuable rights for workmen. In 1875 the same Prime Minister, speaking a few weeks after the passing of the Act of that year, remarked that for the first time in the history of the country the employer and employed sat under equal laws.

Although the general tendency of colonial legislation is to follow that of the parent country, where it can be applied, that is not the case in some important British colonies in relation to the enforcement of labour contracts.

In New South Wales, servants, including artificers, journeymen, and handicraftsmen, and all agricultural labourers, as well as domestic servants, are dealt with under a colonial Act of 1857. For not fulfilling a contract, whether by deserting or not entering upon the service, or for other misconduct or ill-behaviour, justices upon conviction may impose a fine not exceeding £10. In default of distress, imprisonment, not exceeding fourteen days, or forfeiture of wages then due may follow. Obtaining advances of money after entering into a contract, and refusing to go to the place of service, or refusing to perform work to the extent of the advance without reasonable cause, is punishable by direct imprisonment with or without hard labour for any term not exceeding three months. Persons knowingly concealing or employing absconding or absenting servants or persuading them to violate agreements are liable to a penalty not exceeding £10, and in default imprisonment for fourteen days. On the other hand, wages not exceeding £50 and full costs may be recovered by distress, and in default imprisonment for fourteen days; masters are also liable to a penalty for withholding property of their servants. Independently of these provisions, justices may hear and determine in a summary manner any complaint, difference or dispute between a servant and his master, and the award may be enforced by cancelling an agreement or imposing a fine, and in default of distress by imprisonment not exceeding fourteen days. The power of imprisonment under the Act does not extend to women.

In South Australia, by an Act of 1878 (following in the main the tenor of Lord Elcho's Act, rather than the legislation of 1875), whenever the employer

or employed neglects or refuses to fulfil any contract, or the employed neglects or refuses to enter or continue his service or absents himself, or whenever any dispute arises between the parties, the case may be summarily decided by justices, who may order an abatement of wages due, or direct the fulfilment of the contract, with a direction to the party complained against to find security by recognisance or bond with or without sureties; or the contract may be annulled and the amount of wages or compensation apportioned; or, where pecuniary compensation will not, in the opinion of the justices, meet the circumstances of the case, they may impose a fine not exceeding £20. The neglect or refusal to find security for performance of contract may be enforced by imprisonment not exceeding three months.

The Victorian statutes relating to master and servant were consolidated in 1864. Under that Act all agricultural and other labourers and workmen and artisans, as well as domestic servants, were made liable on summary conviction to imprisonment not exceeding three months, or abatement of wages, for breaches of contract or for disobedience or other misconduct or misdemeanour. The like imprisonment was provided for obtaining advances of wages and refusing to serve, and also for wilful or negligent acts involving a destruction of work or materials committed to the workman's charge in default of payment of damages (limited to £10). Wages and amends for ill-treatment were made recoverable by order.

It is impossible within the limits of this article to follow the different provisions in various colonies affecting the relation of employer and employed. To render a summary of practical value local peculiarities

and exigencies must be borne in mind. Where native or foreign races form a material part of the industrial population, or where changes have occurred in their condition, the facts must be taken into account: for example, the legislation of Jamaica, although now constituted an ordinary British colony, must be considered in relation to the former existence of slavery and to the intermediate status of apprenticeship before its abolition. So in British Guiana, the large number of emigrants from the East Indies, many of them working on the estates under indentures, must not be lost sight of.

With regard to India, that vast area cannot be dealt with as if the industrial population consisted of Europeans, manufacturing in its cities. Although natives are increasingly sharing in the labour and ownership involved in the production of manufactures, the cultivation of the soil forms the basis of the support of two-thirds of the population. The true view of India is that as a whole it is divided into a vast number of independent self-acting organised groups, cultivating, trading, and manufacturing, governed by law made up to a great extent of local usages and customs, and where caste is often merely a name for trade or occupation,—the village communities comprising families who are hereditary weavers, potters, blacksmiths, harness makers and so forth.

The condition of the law in European states at the present time with regard to the enforcement of labour contracts is this. In France contracts of work and service stand on the same footing as other contracts. The breach of such contracts is regarded as a private matter, as the subject of a claim for damages, but not of the application of the criminal law. The recovery

of damages is regulated by the Code Napoléon. The juge de paix decides the amount when the sum claimed is under 200 francs, when above that amount the tribunal of first instance. So in Belgium there is no criminal penalty attaching to the breach of a contract of labour; such a contract entitles the aggrieved party, as a general rule, only to pecuniary damages; and the same is the case in the Netherlands, Austria, Hungary, Italy, Portugal, Sweden, Norway, and Russia. In Switzerland there is no criminal liability, provided the dereliction of duty involves no consequences injurious to the public welfare or to the life or health of other persons. The performance of contracts, however, in the larger works in Switzerland is secured by the system of "décompte," or portion of wages retained as security by the employer. In Prussia, although in 1869 all the penal regulations previously existing against breaches of contract and wrongful cessation of work on the part of workmen in mills, mines, and metallurgical establishments and in underground quarries and pits were repealed, police laws are, it seems, still capable of being enforced by way of fine, and, in default, by a short imprisonment in some provinces, against agricultural labourers, and against boatmen or workmen engaged in special field or forest work.

Of the United States, the English representative wrote thus to the Foreign Office in 1869:—"There are few countries in which the working man is held in such regard as in the United States of America. The labouring classes may be said to embrace the entire American nation. Every man works for a living, follows a profession, or is engaged either in mercantile or industrial pursuits." As might be expected, it

may be said that, as to both parties to a contract for labour and service, they stand upon the mere footing of contract, and such contract is not distinguished from any other contract. The matter does not belong to the province of federal legislation, but to the regulation of each particular State. There has been no legislation, however, making the breach of a contract for labour or services the subject of criminal liability. Contracts of apprenticeship are, nevertheless, enforced by statutory provisions.

We have hitherto dealt with the mode of enforcing contracts of labour. It remains to speak of the extent to which the contracts themselves are controlled.

With reference to the period of service, there is no law directly limiting it. A right even to perpetual service founded on a contract may not perhaps be illegal and void; for, if a man can contract to serve for one year, there seems to be no reason to prevent his contracting to serve for one hundred years if he should so long live, though the courts would be inclined to consider it an improvident engagement, and would not be very strict in enforcing it (Christian). No such perpetual contracts, however, exist in actual practice, and where no time is expressly stipulated or implied the contract is generally construed to endure until determined by a reasonable notice on either side, to be construed by the general usage in relation to the particular employment. If a time is expressed or implied, the silent continuing in the service after its expiration draws with it in general a renewal of the same terms as were originally stipulated for. In agriculture the general engagement, expressed or implied, is for a year. In manufacture it is seldom so

long, and in journeyman handicrafts it is sometimes by the hour, but the usage to calculate earnings and the time of payment by the hour or day is often, of course, quite distinct from the duration of the contract. Payment by measure or quantity (piece work) is very general, and so far as the calculation of earnings is concerned supersedes reference to time. Nevertheless the obligation to serve may be conditional on the employer finding a reasonable quantity of work, or may expressly or implicitly endure until a reasonable notice is given on either side. In the pottery manufacture in North Staffordshire most of the workmen in the different branches of the trade are paid by the quantity according to a price list, the engagement being by usage, from Martinmas to Martinmas; and in this and in most other manufactures where the artisan works on the material and in the manufactory or the workshop of the employer he is subject to the usual hours of work, although only paid by the quantity.

Most workmen of all classes and descriptions of labour are paid weekly, in whatever way their earnings accrue or are calculated. The contracts of infants for their personal services as necessary for their maintenance are enforceable, for unless they could make such contracts they might starve. As long as these contracts were enforceable by imprisonment the courts looked closely into them, refusing to enforce them unless they were mutual, that is, capable of being enforced against the employer as well as against the servant. If there were an agreement to serve under circumstances which involved no obligation to employ, the courts would not enforce the contract, and young servants were not unfrequently discharged from

custody on the ground that no obligation to serve existed by reason of the onesidedness. Contracts of apprenticeship are beyond the limits of this article.

The will of the parties is not interfered with as regards the description of labour or the adequacy of the remuneration agreed upon. In the absence of any verbal or written stipulation, the performance of labour upon an express or implied request in general involves an implied agreement to pay the value of it in the current coin of the realm; and wherever a mutuality of agreement can be implied, that is to say, where it is not onesided, it can be enforced. As the employer and employed are free, they would primarily have a right to stipulate that the remuneration for service should be for something else than money, as for articles of value, or for an exchange of labour; but the primary right of employer and employed to make their own arrangements as to the mode of remuneration is interfered with in England by legislation, especially by the so-called Truck Act, 1 and 2 Will. IV, c. 37, applying to all persons employed in the manufacture of iron, from raising the stone to the completion of the making of the products of iron and steel, and the manufacture of all other hardware and cutlery, and the getting of coal, stone and slate, salt and clay, and the manufacture of pottery, and the weaving, preparation, and dyeing of woollen, worsted, cotton cloth, and silk. The object of the statute is to compel payment of wages in money. For this purpose it prohibits agreements for paying wages otherwise, and prohibits paying them in goods or money's worth. To insure obedience, it enables the artificer to repudiate a contract and payment contrary to its provisions, and, however fairly he may have been dealt

with, to enforce payment in such case over again. It is obvious that such a provision is open to two most important objections:—(1) It interferes with that freedom of contract and conduct which is universally recognised as of the greatest benefit; (2) it enables an artificer who may have requested and received payment, otherwise than in money, and who may have benefited thereby and been most justly and kindly treated, to commit a great dishonesty by enforcing payment again. But, grave as these objections are, the legislature has deemed it necessary to face them, in order to guard against the mischiefs of a system under which the workman may receive directly from his employer, or indirectly, as through "tommyshops" in which the employer has an interest, articles not a real equivalent of the wages; so that but for the statute an employer might engage a man to work for him with a promise of payment in goods, and cheat him by giving him goods of inferior quality or overcharged, or engaging him with a promise of money and then cheating him by a pressure to take goods, or by supplying the man with goods beyond his wages, get him into his debt, and then exercise an injurious control over him. It is in vain to say that the master would cheat in cases where money wages were agreed for, by withholding money agreed to be paid, and that the law would redress the one wrong as readily as the other. The answer is that such a cheat is too barefaced, and would certainly be successfully resisted; while more or less of inferiority in the quality or value of goods might be endured, or, if contested, would give rise to more doubtful inquiries. Whether these mischiefs are worth the remedy, or whether the remedy is the best, is not

the question to be discussed or determined in this article.

As servants in husbandry are often remunerated in part in other ways than by money, as by land or its produce, or by house room, and in a variety of ways, the Truck Act especially exempts them. Domestic servants are also specially exempted. Moreover, by express provision, the Act does not prevent any employer of any artificer or agent of such employer from supplying or contracting to supply medicine or medical attendance, or any fuel, or any materials, tools, or implements employed by the artificer in his trade or occupation if employed in mining, or any hay, corn, or other provender for horses or other beasts of burden employed by such artificer in his trade or occupation, nor from letting any tenement at a rental to any artificer, workman, or labourer within the Act, nor from supplying or contracting to supply to any artificer any victuals dressed or prepared under the roof of the employer and there to be consumed by such artificer, nor from making deductions or stoppages, or advancing money for any of these purposes, provided that only the real value is charged, and that the agreement for any such stoppage or deduction is in writing. Employers are not prevented from advancing money to an artificer for his contributions to a friendly society or to a savings bank, or for his relief in sickness, or for the education of his children, or from making deductions for such education, if the agreement for such deduction is in writing. The interpretation of the Truck Act has exercised the most subtle intellects. It has been determined by the majority of judges that the obligation to render services personally is necessary to make the Act

applicable. The circumstances under which stoppages and deductions may be made, and other exceptions from the operation of the prohibitory clauses of the Act, have also been the subject of divergent opinions. A custom having prevailed among the employers of artificers in the hosiery manufactures of letting out frames and machinery to the artificers employed by them, in 1874 contracts to stop wages for frames were declared illegal, and the stoppage of wages made unlawful. By a provision of the Employers and Workmen Act 1875, forfeitures on the ground of absence or leaving work cannot, in the case of a child, young person, or woman subject to the provisions of the Factory Acts, be deducted from or set off against a claim for wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer sustained by reason of such absence or leaving work.

Great evils having arisen in Scotland through the arrestment of wages for debts of labourers, manufacturers, artificers, and other work people, the power to arrest wages earned there not exceeding twenty shillings a week was in 1870 taken away, and limited in amount where the wages are above that sum. A provision of a statute of the reign of George II, "to prevent oppression of the labourers and workmen employed in any respect in or about making or manufacturing of gloves, breeches, boots, shoes, slippers, wares or goods of that sort," requires the true weight, quantity, or tale to be declared of goods and materials delivered out to be wrought up in those manufactures.

The system of the "livret" (still the law in some European states, although fallen into disuse as no longer in harmony with the direction of modern views),

by which it is a condition precedent to a workman entering into a contract, or being engaged by a fresh employer, to produce a document certifying that he has fulfilled his previous engagements, is unknown now in England. The former system of rules stood much on the same footing, and there is something closely resembling it introduced into the rules regulating the employment of drivers of public vehicles in the metropolis. It is only in relation to domestic service that a new employer concerns himself with the antecedents of a servant or with anything beyond the capacity to work; and the former employer in whose interests "livrets" were imposed does not in general deem it worth while, with the present abundance of labour in every field to work, to impose any restraint on the departure of a dissatisfied workman. The practical ground of complaint is not so much a workman exchanging employers, as a neglect of work while remaining in service.

The legal remedies at present in existence for breaches of contract have been necessarily stated in the outline of the last statute on the subject of employer and employed. The weak point is the absence in England of any mode by which the performance of contracts of labour can be enforced, as contracts of other kinds can be where damages do not afford a remedy. Lord Elcho's Act of 1867 purposely gave a remedy in the nature of specific performance, and where carefully applied was found to work very well. The commission of 1875 expressly recommended the retention of this power as quite distinct from criminal punishment. Provision for compelling the performance of a contract exists in many countries where any application of criminal law is repudiated.

Nevertheless, not so much from any objection on the part of the framers to compulsory performance as from fear of its abuse by the heavy hand (the bane of administrative legislature as of inventive genius), the power is gone. The result is undoubted hardship to employers, particularly to those (and there are many of them) who are themselves workers and entirely dependent on the due performance of contracts by their fellow-workers. That home legislation is defective in this respect may be inferred from the fact that subsequent colonial legislation has given the means of getting labour contracts performed without trenching on the domain of criminal law. As, however, there is little probability of an amendment of home law in the direction indicated, it is to be hoped that compensation for diminished legal remedy will be found in an increased sense of moral responsibility.

Arbitration is frequently employed to settle differences between masters and workmen.

The institution of "conseils de prud'hommes" is known by name as in force in most of the manufacturing districts of France and Belgium and other Continental countries. The council is a recognised tribunal consisting of equal numbers of employers and employed. All disputes between master and workmen whether as to quality of work or rate of wages, are first submitted to a committee, which sits privately, to endeavour to settle the question amicably and at a nominal expense; failing this, the case is referred to the council, which sits in public once a month, or oftener if required. Though the right of appeal to the regular court exists, it is seldom resorted to.

In Austria a law of 1869 instituted arbitration courts of this description in every important manufac-

turing town and district, to settle all disputes respecting wages, continuance of work, fulfilment of contracts, and claims on benefit clubs and relief funds and matters of that kind. Each court of arbitration must be composed of at least twelve and at most twenty-four members,—one half of them employers elected by employers, and the other half workmen elected by workmen, each class voting separately. Workmen sitting on cases judged by these courts are paid by the commune for every day's sitting. In the case of the minor trades, which cannot maintain regular arbitration courts, the trade laws assign the adjudication of all disputes between masters and men in the first instance to the representatives of the trade in which such disputes arise, and, in places where the necessary quorum for that purpose cannot be made up by the local representatives of any particular trade, the deficiency is supplied by a certain number of workmen temporarily appointed by the municipal authorities from amongst the most respectable and intelligent members of their class to act as arbitrators in such cases. Disputes which cannot be settled in this way must be decided by the common law courts; and it is only a court of law which can take cognisance of a claim raised thirty days after the expiration of a contract to which it refers.

In England no such compulsory legislation exists. The old guilds acted as arbitration courts, and, although their decision was practically binding, the guilds were only adapted to deal with small craftsmen acting singly. In modern times the law has been very reluctant to give effect even to voluntary agreements for referring disputes to arbitration, on a notion that to take away the jurisdiction of the ordinary tribunals

and set up another was contrary to settled principles. There are now several statutes, however, for giving legal effect to the awards of arbitrators in trade disputes voluntarily referred to arbitration and sitting in the way pointed out The most successful arbitrations between employers and employed appear to be under voluntary submissions, in accordance with rules previously agreed to by employers and employed in particular manufactures, the decisions being acted upon independently of any legislative aid.

Applied to the one pre-eminently important—probably the only great—question, the rate of wages, reference to arbitration is full of difficulties. The difference relates to the future, not to the past. It is an erroneous notion that strikes and lock-outs involve any breach of contract. In former days it may have been that employer and employed refused to carry out a contract on the ground that the other side had first failed in the performance of some condition precedent to the right to call on the other to perform work or to pay for it, as the case might be; but in the present day the disturbance of the previous relationship of employer and employed generally occurs without any such allegation on one side or the other. Thus, in a strike terminated while this article is in the press, the contracts between employers and employed in the pottery trade of North Staffordshire were previously at an end by lapse of time. The question in such cases is on what terms the parties will agree for the future relationship of employer and employed, there being no such relationship when the strike began, and of course none while it is pending. This goes to the root of the whole matter, although it may seem a technical mode of looking at it. But if no such obstacle

existed there are difficulties of another kind. In such cases a board of conciliation is inevitably equally divided, and reference to an umpire becomes necessary. To give confidence, he must not be an employer or employed in the trade. In general, therefore, he must know nothing previously of the subject he has undertaken to settle. He must deal with it on such imperfect knowledge as he can acquire in the arbitration, and apply such general principles as may occur to him. Nevertheless much good has been done by a good-tempered calm inquiry in which both sides learn perhaps for the first time the grounds on which the demand is made or resisted.

A recent important Act of Parliament, the Employers' Liability Act, 1880, must be noticed. To render its provisions intelligible, it is necessary to state the general law on the subject of civil liability for negligence. A person who causes injury to the person or property of another is liable in damages to that person, and if the injury has resulted in death the right of action is extended to the representatives, on behalf of the widow or children, independently of any criminal liability incurred by the negligence. If the person who committed the negligent act is in the service of another, and the negligent act was committed in the course of the discharge of his duty, the civil liability extends to the master. This liability of the master is important to the injured person, because the servant is in most cases a much poorer person than the master. If they were equally able to pay damages nothing would be gained by resorting to the master. But the liability of the latter was not, before 1880, extended to make the master responsible in damages if the person injured and the negligent ser-

vant were both in his service and both were performing the same kind of duty, a "common employment," as it has been termed, and if the master, so far from being guilty of any actual negligence himself, had employed a generally competent person, and had provided him with the means of properly performing his duty. No vindication of the then law seems necessary, for, whether the liability of an employer to strangers is just or not, there is an obvious distinction between such a liability and responsibility where all parties are "rowing in the same boat," to adopt an expression used in one case, whether the injured person be a servant or guest of the master. Both are volunteers, and both know that the master will not personally intervene. There does not appear to be any injustice in such a case in confining the liability to that of the servant personally guilty of the negligence, although a poor man. However, some apparently hard cases, especially arising out of accidents on railways, where, while a passenger could sue the company for negligence, an engine driver or a guard's remedy was limited to the person actually guilty of the negligence, led to the attention of Parliament being called to the subject. In 1877 a committee of the House of Commons, pointing out that the development of modern industry has created large numbers of employing bodies, such as corporations and public companies, to whom it is not possible to bring home personal default, and that there are other cases in which masters leave the whole conduct of their business to agents and managers, themselves taking no personal part whatever either in the supply of materials or in the choice of subordinate servants, reported thus :

"Your committee are of opinion that in cases such as these, that is, where the actual employers cannot personally discharge the duties of masters, or where they deliberately abdicate their functions and delegate them to agents, the acts or defaults of the agents who thus discharge the duties and fulfil the functions of masters should be considered as the personal acts or defaults of the principals and employers, and should impose the same liability on such principals and employers as they would have been subject to had they been acting personally in the conduct of their business, notwithstanding that such agents are technically in the employment of the principals. The fact of such a delegation of authority would have to be established in each case, but this would not be a matter of difficulty. Your committee are further of opinion that the doctrine of common employment has been carried too far when workmen employed by a contractor and workmen employed by a person or company who has employed such contractor are considered as being in the same common employment."

Three years afterwards the Act in question was passed. By sect. 1, where personal injury is caused to a workman—

"(1) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer; or (2) by reason of the negligence of any person in the service of the employer, who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or (3) by reason of the negligence of any person in the service of the employer to whose orders or directions the workmen at the time of the injury was bound to conform and did conform, where such injury resulted from his having so conformed; or (4) by reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or (5) by reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway,—the workman, or in case the injury results in death the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as

if the workman had not been a workman of nor in the service of the employer, nor engaged in his work."

Section 2 provides that a workman shall not be entitled under the Act to any right of compensation or remedy against the employer in any of the following cases :

"(1) Under subsection 1 of section 1, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to, the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition; (2) under subsection 4 of section 1, unless the injury resulted from some impropriety or defects in the rules, bye-laws, or instructions therein mentioned; provided that, when a rule or bye-law has been approved or has been accepted as a proper rule or bye-law by one of her Majesty's principal secretaries of state, or by the Board of Trade, or any other department of the Government, under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or bye-law; (3) in any case where the workman knew of the defect or negligence which caused his injury and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior knew of the said defect or negligence."

Compensation under this Act (which extends to a railway servant and any person to whom the Employers and Workmen Act 1875, already noticed, applies) is enforced by action in the county court (in Scotland the sheriff's courts, in Ireland the civil bill court) after notice within six weeks of the nature and particulars of the claim (unless there was reasonable excuse for the want of notice in the case of death). The compensation is limited to three years' earnings, and the action must be commenced within six months from the

occurrence of the accident, or in case of death within twelve months from the time of death.

Neither in the United Kingdom nor abroad does the right to damages for breach of contracts override the general law as to offences, so that, if any of the parties do anything amounting to a criminal offence, a prosecution may follow although a breach of contract is involved for which breach damages may be recovered.

There are, moreover, a variety of Acts of Parliament from the reign of Anne still in force for securing employers from the frauds of workmen employed in various trades in working up materials, not only as regards the misappropriation of property entrusted to them, but also in relation to fraudulent contrivances for misrepresenting the amount of work done. For such offences fine or imprisonment may be inflicted.

Apart from the legislation already mentioned, there are a great number of Acts of Parliament directly or indirectly affecting labour. The general direction of all such legislation is to ameliorate the condition of workmen.

The legislation regulating the hours of labour of young persons, originating in the benevolent exertions of the Earl of Shaftesbury, and extended by Lord Aberdare as Secretary of State for the Home Department and others, is most important (see Factory Acts). The indirect effects of those provisions in causing better order in the conduct of manufacturing industries cannot be overlooked. The Agricultural Gangs Act, 1867, arising out of the practice in the east of England of persons known as gang masters hiring children, young persons, and women, with a view to contracting with farmers and others for agricultural work is a recent illustration of the direct objects of such legisla-

tion. The fencing of machinery, the careful working of coal and metalliferous mines, and the like, have been the subject of minute legislative provisions, which, as well as the Explosive Act, 1875, intimately affect the wellbeing of the labouring community and the general safety.

The wants of servants are considered in the preference shown to claims for wages in the case of death and bankruptcy, and the general need of all classes of workmen is kept in view in the provisions relating to workmen's dwellings, and the obligation of railway companies to afford facilities for their conveyance at a low rate. Less directly they are considered in the legislation relating to friendly and provident societies; of equivocal effect was the legislation respecting small loans, intended to facilitate the purchase of tools, but taken advantage of to form loan societies of doubtful general benefit to the community.

We cannot notice here the effect of the laws regulating the land and sea forces on contracts relating to labour by persons entering the army or navy.

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